

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

JEAN-CLAUDE DEMOSTHENIDY, an) Case No. 07cv2050-WQH (BLM)
individual doing business as)
INTERACTIVE DESIGN SYSTEMS,)
Plaintiffs,) **NOTICE AND ORDER SETTING EARLY**
v.) **NEUTRAL EVALUATION CONFERENCE**
FINLEY ENGINEERING GROUP, INC.,)
a Florida corporation; DOES 1)
through 10, inclusive,)
Defendants.)
_____)
and RELATED COUNTERCLAIM.)
_____)

IT IS HEREBY ORDERED that an Early Neutral Evaluation (ENE) of
your case will be held on **January 14, 2008** at **1:30 p.m.** in the
chambers of the Honorable Barbara L. Major, United States Magistrate
Judge, located at **940 Front Street, Suite 5140, San Diego,**
California, 92101.

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1 The following are mandatory guidelines for the parties
2 preparing for the Early Neutral Evaluation Conference.

3 1. **Purpose of Conference:** The purpose of the ENE is to
4 permit an informal discussion between the attorneys, parties, and
5 the settlement judge of every aspect of the lawsuit in an effort to
6 achieve an early resolution of the case. All conference discussions
7 will be informal, off the record, privileged, and confidential.
8 Counsel for any non-English speaking party is responsible for
9 arranging for the appearance of an interpreter at the conference.

10 2. **Personal Appearance of Parties Required:** All parties,
11 adjusters for insured defendants, and other representatives of a
12 party having full and complete authority to enter into a binding
13 settlement, and the principal attorneys responsible for the
14 litigation, must be present **in person** and legally and factually
15 prepared to discuss settlement of the case. Counsel appearing
16 without their clients (whether or not counsel has been given
17 settlement authority) will be cause for immediate imposition of
18 sanctions and may also result in the immediate termination of the
19 conference.

20 Unless there are extraordinary circumstances, persons required
21 to attend the conference pursuant to this Order shall not be excused
22 from personal attendance. **Requests for excuse from attendance for**
23 **extraordinary circumstances shall be made in writing at least three**
24 **(3) court days prior to the conference.** Failure to appear at the
25 ENE conference will be grounds for sanctions.

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1 3. **Full Settlement Authority Required:** In addition to
2 counsel who will try the case, a party or party representative with
3 full settlement authority¹ must be present for the conference. In
4 the case of a corporate entity, an authorized representative of the
5 corporation who is not retained outside counsel must be present and
6 must have discretionary authority to commit the company to pay an
7 amount up to the amount of the Plaintiff's prayer (excluding
8 punitive damages prayers). The purpose of this requirement is to
9 have representatives present who can settle the case during the
10 course of the conference without consulting a superior. Counsel for
11 a government entity may be excused from this requirement so long as
12 the government attorney who attends the ENE conference (1) has
13 primary responsibility for handling the case, and (2) may negotiate
14 settlement offers which the attorney is willing to recommend to the
15 government official having ultimate settlement authority.

16 4. **Confidential ENE Statements Required:** No later than five
17 (5) court days prior to the ENE, the parties shall submit
18 confidential statements no more than ten (10) pages² in length
19 directly to the chambers of the Honorable Barbara L. Major. **These**
20 **confidential statements shall not be filed or served on opposing**
21 **counsel.** Each party's confidential statement must include the
22 _____

23 ¹ "Full settlement authority" means that the individuals at the settlement conference must be
24 authorized to explore settlement options fully and to agree at that time to any settlement terms
25 acceptable to the parties. Heileman Brewing Co. v. Joseph Oat Corp., 871 F.2d 648, 653 (7th Cir.
26 1989). The person needs to have "unfettered discretion and authority" to change the settlement
27 position of a party. Pitman v. Brinker Int'l, Inc., 216 F.R.D. 481, 485-86 (D. Ariz. 2003). The purpose
28 of requiring a person with unlimited settlement authority to attend the conference contemplates that
the person's view of the case may be altered during the face to face conference. Id. at 486. A limited
or a sum certain of authority is not adequate. See Nick v. Morgan's Foods, Inc., 270 F.3d 590, 595-97
(8th Cir. 2001).

² The parties shall not append attachments or exhibits to the ENE statement.

1 following:

2 a. A brief description of the case, the claims and/or
3 counterclaims asserted, and the applicable defenses or position
4 regarding the asserted claims;

5 b. A specific and current demand or offer for settlement
6 addressing all relief or remedies sought. If a specific demand or
7 offer for settlement cannot be made at the time the brief is
8 submitted, then the reasons therefore must be stated along with a
9 statement as to when the party will be in a position to state a
10 demand or make an offer; and

11 c. A brief description of any previous settlement
12 negotiations, mediation sessions, or mediation efforts.

13 General statements that a party will "negotiate in good faith"
14 is not a specific demand or offer contemplated by this Order. It is
15 assumed that all parties will negotiate in good faith.

16 5. **New Parties Must be Notified by Plaintiff's Counsel:**
17 Plaintiff's counsel shall give notice of the ENE to parties
18 responding to the complaint after the date of this notice.

19 6. **Requests to Continue an ENE Conference:** Local Rule
20 16.1(c) requires that an ENE take place within forty-five (45) days
21 of the filing of the first answer. Requests to continue ENEs are
22 rarely granted. However, the Court will consider formal, written,
23 *ex parte* requests to continue an ENE conference when extraordinary
24 circumstances exist that make a continuance appropriate. In and of
25 itself, having to travel a long distance to appear in person is not
26 "extraordinary." **Absent extraordinary circumstances,**

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1 requests for continuances will not be considered unless submitted in
2 writing no less than seven (7) days prior to the scheduled
3 conference.

4 Questions regarding this case or the mandatory guidelines set
5 forth herein may be directed to the Magistrate Judge's law clerk at
6 (619) 557-7372.

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8 Dated: December 6, 2007



BARBARA L. MAJOR
United States Magistrate Judge

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12 COPY TO:

13 HONORABLE WILLIAM Q. HAYES
14 U.S. DISTRICT JUDGE

15 ALL COUNSEL
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NOTICE OF RIGHT TO CONSENT TO TRIAL
BEFORE A UNITED STATES MAGISTRATE JUDGE

In accordance with the provisions of 28 U.S.C. § 636(c), you are hereby notified that a U.S. Magistrate Judge of this district may, upon the consent of all parties, on Form 1A available in the Clerk's Office, conduct any or all proceedings, including a jury or non-jury trial, and order the entry of a final judgment. Counsel for the plaintiff shall be responsible for obtaining the consent of all parties, should they desire to consent.

You should be aware that your decision to consent or not to consent is entirely voluntary and should be communicated solely to the Clerk of Court. Only if all parties consent will the Judge or Magistrate Judge to whom the case has been assigned be informed of your decision.

Judgements of U.S. Magistrate Judges are appealable to the U.S. Court of Appeals in accordance with this statute and the Federal Rules of Appellate Procedure.

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